

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2266

2001 SENATE NATURAL RESOURCES
SB 2266

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2266

Senate Natural Resources Committee

Conference Committee

Hearing Date 2-2-01

Tape Number	Side A	Side B	Meter #
1	X		Start - 38.1
2-9-01 1	X		24.4 - 26.9
Committee Clerk Signature <i>J. Smith</i>			

Minutes:

SENATOR FISCHER opened the Committee meeting.

Roll call was taken indicating all committee members present.

SENATOR TOLLEFSON opened the hearing on SB 2266. A BILL RELATING TO THE DURATION OF EASEMENTS.

SENATOR RANDEL CHRISTMANN of District 33, cosponsor of SB 2266 testified for the record in support of the bill.

SENATOR STEVEN TOMAC of District 31 prime sponsor of the SB 2266 testified that was probably the most important bill of this committee in this legislative session, because it addresses a major policy decision that the state has to consider. There has been much debate as to the development of land adjacent to the Missouri River and it's corridor. Should the state take exception to the 99 year easement law and allow the land owner to make permanent use of that

land. He feels the issue deserves good debate and that as a state are we doing the right thing in allowing or not allowing the development.

REPRESENTATIVE JOHN MAHONEY, of District 33, cosponsor of SB 2266, testified that the area between Garrison Dam and Lake Oahe is the only stretch not developed and the farmers along the area should be given the opportunity to get something for keeping it in it's natural state comparable to the offers they get from developers.

ANDY MORK, Chairman of BOMMM (Burleigh, Oliver, Morton, McClean, Mercer Counties) organized since the mid 1980's with the express purpose of promoting bank stabilization testified in support SB 2266. They look at the bill as an "anti-development easement". As they would envision it is that the land owner would sell the development rights, keep all the others rights, and then keep a certain amount of footage along the river natural.

ERIC AASMUNDSTAD, President of the North Dakota Farm Bureau, testified in support of SB 2266 because the bill is so well defined. We are philosophically opposed to professional easements, but in this instance we have very specific policy that deals with this and as we understand it, it is very narrowly defined for lands adjacent to the Missouri River. Although they still have reservations about who hold these easements, who will manage them and the manage practices.

BILL PFEIFER, representing the North Dakota Wildlife Society testified in support of SB 2266 (See attached testimony).

Written testimony was presented of MIKE DONAHUE representing the North Dakota Wildlife Federation, Inc. (See attached testimony).

DAVID BORLDUS, president of the North Dakota Lewis & Clark Bicentennial Foundation of Washburn and the president of the National Council of the Lewis & Clark Bicentennial testified

that they are in favor in any efforts that would preserve the natural setting along the Missouri River.

MALCOLM BROWN representing the Real Property Section of the North Dakota State Bar Association testified in a neutral position of SB 2266. (See attached testimony).

TRACY POTTER, representing the Ft. Abraham Lincoln Foundation, testified in support of SB 2266, that this approach clearly solves one dilemma concerning the development of the area and the views. The foundation is unhappy about zoning restrictions and would much rather prefer a compromise position where a landowner can sign a conservation easement and funding provided to the landowner for foregoing the rights to the development of the land.

WES TOSSETT, spoke on behalf Dennis Miller of Landowner Association who is opposed the bill, but he wanted to express his own neutral position. He felt that when a person dies they should not dictate the future owners. He felt that we should zone instead of having a perpetual easements. He passed out a document on "Myths About Conservation Easements".

There was no opposing testimony presented.

SENATOR TOLLEFSON closed the hearing on SB 2266.

FEBRUARY 9, 2001

SENATOR FISCHER reopened discussion on SB 2266.

SENATOR TRAYNOR made a motion for a "DO NOT PASS" of SB 2266.

SENATOR EVERY second the motion.

Discussion was held and like the sister bill, SB 2319, a better more encompassing bill is scheduled for next week, SB 2288. All agreed that the every landowner has the right to sell easements to their property.

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Senate Natural Resources Committee

Bill/Resolution Number SB 2266

Hearing Date 2-2-01

SENATOR FISCHER called for a roll vote. The vote indicated 5 YAYS, 2 NAYS, 0 ABSENT

OR NOT VOTING.

SENATOR EVERY will carry SB 2266.

REPORT OF STANDING COMMITTEE (410)
February 9, 2001 2:05 p.m.

Module No: SR-24-2892
Carrier: Every
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2266: Natural Resources Committee (Sen. Fischer, Chairman) recommends DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2266 was placed on the Eleventh order on the calendar.

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NEXT FICHE

2001 TESTIMONY

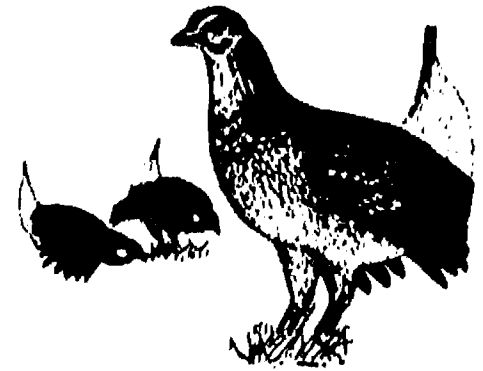
SB 2266



North Dakota Chapter

THE WILDLIFE SOCIETY

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF BILL PFEIFER
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED TO THE SENATE NATURAL RESOURCE COMMITTEE
ON SB 2266, February 2, 2001**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I'm Bill Pfeifer speaking on behalf of the North Dakota Chapter of The Wildlife Society. The Wildlife Society supports SB 2266.

It certainly is a welcome change to have legislation introduced which removes encumbrances for landowners to manage their land as best suits their needs.

Recent legislation passed a "takings" Bill that was to provide private property rights to landowners thereby preventing restrictions that would deny the landowner the greatest economic benefit. This Bill does just that. It removes the ninety-nine-year easement restriction on property in the Garrison reach of the Missouri River, that portion of the river from Garrison Dam to the upper end of Lake Oahe.

Lands in this area are becoming of increased interest to potential buyers wishing to convert farm lands into suburban settings. The change of land use is rapidly eroding this farming industry. In addition, the scenic value of this unique area is deteriorating and will be lost forever if development continues the same as in the past.

Removing the current ninety-nine-year easement restrictions from this reach of the Missouri River will allow easements that will help the landowners in keeping farm lands in the farming business.

Easements, whether purchased by a governmental entity or an organization, are intended to preserve the integrity of that landscape. Easements serve as another tool that

the landowner has at his disposal in determining how it best suits his management needs. Selling an easement can well mean the difference between salvaging a viable farm or ranch operation or losing it forever.

When discussing easements, the question always comes up of the unfairness of leaving land with an easement on it to the next generations that will not have options of deciding how they want to manage the land. The answer is that the present owner has the option of leaving his property as he so desires, with or without an easement, or if he even wishes to leave his property to his descendants.

Removing the ninety-nine-year easement limitation is a community wish and has the community backing. I have here copies of about a thousand postcards, with signatures, indicating their approval of the removal of the ninety-nine-year easement restriction. These thousand signatures are not from parties living in distant locations; they are signatures of community people, living in or near this reach of the Missouri River, who want to see this area protected.

Easements do not take the land out of production, but they do benefit the landowner by maintaining a lower tax base than if the land were subdivided.

The Wildlife Society supports SB 2266 because it gives the landowner another tool and another option in managing his land. Therefore, we ask the committee for a unanimous DO PASS vote.

February 2, 2001

For: North Dakota Senate Natural Resources Committee

Reference: SB 2266 and SB 2319

The North Dakota Wildlife Federation, Inc. supports SB 2266 and SB 2319 and asks for a do pass for each bill

The Federation believes that a landowner should have the right to enter in to a perpetual easement if he or she so desires.

Within the areas designated in the bills, not all landowners will enter in to an easement. But, for those that do, normally they will gain a substantial tax advantage.

All in all, we believe that agriculture, conservation, development, and aesthetics will gain from this change.

Mike Donahue
Lobbyist #258

TESTIMONY OF MALCOLM H. BROWN
SENATE NATURAL RESOURCES COMMITTEE
SB 2266 and SB 2319
FEBRUARY 2, 2001

Mr. Chairman and Members of the Committee:

I appear on behalf of the Real Property Section of the North Dakota State Bar Association. While we neither support nor oppose SB 2266 or SB 2319, we believe certain information should be considered by the Committee in its deliberations on these bills.

First of all, there are many types of easements. There are easements for waterfowl purposes, there are easements for drainage purposes, there are easements for conservation purposes, etc. There are also easements for electric transmission lines, for gas, oil, and other commodity pipelines. There are easements for cell phone towers, and there are easements for restricting the use of land for aviation purposes near airports. All of these types of easements would be affected by the amendments proposed by SB 2266 and SB 2319.

For instance, if these bills were law, a pipeline to cross North Dakota could have a perpetual term where it crossed the Missouri River and the Missouri Coteau, but would have only a 99-year term where it went through eastern North Dakota. A cell phone tower could have a perpetual existence in the Missouri Coteau, but in Cass County would be limited to 99 years.

Thus, the first issue that may be considered with regard to these bills is whether easements should have a statutory limit on their term, or whether easements should be allowed to be perpetual based on the agreements between the parties to the easements.

ing property with a conservation easement will
... easy.

FALSE. You are required to inform the buyer a conservation easement exists. This may lessen the value of the property, the number of people willing to share title with an organization or government agency, and the number of banks willing to lend money for a loan to purchase property with a split title.

Some easements require the bank to take a secondary interest in deference to the easement. This can dramatically decrease the willingness of a financial institution to loan money on the property.

Because the holder of the easement already owns part of the title, they may have an interest in purchasing the remainder of the property. If this is a non-profit organization or Federal agency, that may take the property off tax rolls.

A conservation easement will preserve my property just as it is, forever.

FALSE. Land changes. Each season brings change to the land. Some changes are major and others minor but, over time, even with no intrusion or help from man, land will change.

My neighbor sold a conservation easement last year and he hasn't had any trouble, so my heirs and I won't.

FALSE. Perpetual easements generally don't cause problems right away. But wait 20 or more years and see what problems crop up.

Thousands of acres of wetland easements were sold in ND during the 1960's and 70's, but most landowners didn't experience problems until the next generation took over the property. Now basic terms seem to have been redefined and boundaries covered by the easement changed. The original maps were "lost" or are "not available." Many of these landowners would love the opportunity to buy back the easement and regain control of their property.

The purchasing agent is like a nice person
don't need anyone else to review the easement
contract before I sign.

FALSE. The purchasing agent wants something that you have - your property. It is in that person's best interest to be pleasant and agreeable. The purchasing agent works for someone else - not you.

In any type of land transaction, you need professionals (an accountant and attorney) with experience in easements, tax, estate planning and property transactions to represent you and your best interests. If you are dealing with a perpetual easement, you want to double and triple check the contract. Most land sales deal only with the property until it is sold, but a perpetual easement is forever.

Keep in mind that, however pleasant the purchasing agent is, that will likely not be the person with whom you will deal on easement management issues and will certainly not be the person to manage the easement during its lifetime. Many easement contracts allow the easement to be sold, so your heirs or future owners of the property may end up dealing with an entirely different organization or agency holding the easement. That's why you need professional assistance to look at all of the options before you sign a contract.

Easements on agricultural property in North Dakota are limited to 30 years.

TRUE AND FALSE. North Dakota law allows only certain organizations and agencies to hold easements, and those easements are limited to 30 years. However, Federal agencies are not bound by state law, so organizations may purchase perpetual easements if the title is given to Federal agencies. While this violates the spirit of the law, it is technically legal in the mind of some officials.

Provided by
Landowners Association of North Dakota
(LAND)
P O Box 38 Bismarck, ND 58502-0038
Phone/Fax 701-667-4185
Email: Lhamer@gcentral.com
Website: www.geocities.com/Landowners

MYTHS ABOUT CONSERVATION EASEMENTS

*What every landowner should
consider before signing
any type of
conservation easement.*

**We strongly urge you to
seek professional advice
from accountants and
attorneys experienced with
easements before
you make a decision.**

"Perpetual" means 99 years.

FALSE. Perpetual is forever. There is precedent for breaking an easement through eminent domain when a strong public need is found, but two rural water systems in ND had problems accessing easement property. This cost all users of the system time and money. What happens when new telephone or electrical lines are needed?

If I sell a conservation easement, I can still use my property just as I always have.

FALSE. No, you give up control of all property covered in the easement. Forever, there will be an organization or agency with the power to look over your shoulder and approve or disapprove your management practices.

Most easements require you to give access at all times, even during the growing season when access can damage crops. You may have to obtain approval for weed control, grazing or other management practices. Many easements allow "approved" practices, but may not list specific practices. That's a loophole in the contract that allows the easement holder to change the list of approved practices without your consent.

When I sell a conservation easement on my property, I retain full title to the land.

FALSE. The title becomes split between the landowner and the holder of the easement. Many easements allow sale or transfer of the easement title to other organizations or agencies, so you may find yourself or your heirs with an entirely different partner than the one to whom you sold the easement.

I need money right now and a conservation easement will put cash in my pocket.

THINK AGAIN. If your land is mortgaged, chances are the conservation easement payment will go directly to the lender and may be used for the interest payment instead of reducing the principle. Read the fine print. Regardless, you are responsible for paying income taxes on the full amount of the easement. Selling an easement may actually harm your cash flow because of the tax complications.

Short term (30 years or less) easements are better than perpetual easements.

TRUE. Easements of a shorter duration allow future generations more options and flexibility in managing their property. But short term easements still give up control of your property, so it pays to talk to professionals before you make any decisions.

Conservation easements are the only way to protect native sod.

FALSE. Most of the land suitable for cultivation in our state has already been broken. There is no incentive for breaking more land unless tillage is the only effective means of weed control.

Some of the land identified as "native sod" for the purpose of conservation easements was farmed within recent memory. If the characteristics of native sod cannot be distinguished between that which was never plowed and farmland which was planted back to grass, then landowners must be doing a pretty good job managing their prairie. If we need more prairie, we can always convert more farmland to grass. It just takes ingenuity. North Dakota landowners already possess.

My easement allows "normal management practices," which is everything I normally would do with my property. All normal ways be allowed.

FALSE. The easement might allow for "normal management practices," the definition of that term may change over time and in ways you can not imagine now. Selling an easement to be managed in conjunction with an organization or agency does not guarantee a particular management practice for years to come. Many easement contracts allow the purchasing organization or agency to sell or transfer title to the easement, so it may be an entirely different entity who interprets "normal management practices," for your heirs or future owners of this property.

Conservation easements will save me money in taxes.

THINK AGAIN. If you own land valued at \$100/acre and sell a conservation easement for \$30/acre, you pay income tax on the \$30. Since this was a sale of a tangible piece of your property your basis for tax pur-

poses in the property is reduced to \$70. When you sell the land if it appreciates the difference in sale price over the \$70 becomes taxable. Hence you pay tax on the \$30 during the second sale.

We're developing too much land now. If we keep up at this rate, we're going to be all developed and not have agricultural land.

FALSE. According to the National Conservation and Resource Service's (NRCS) 1997 National Resources Inventory, the rate of development of agricultural land in North Dakota for 1992-97 was approximately half of the rate from 1987-92. Development has slowed and North Dakota is losing population. We are not in danger of running out of agricultural land.

A conservation easement requires you to allow hunting.

TRUE or FALSE, depending on how your lease reads. Many conservation easements currently sold in North Dakota are governed by the National Wildlife Refuge System Administration Act, so you need to read the fine print to see all of the requirements. Many of the funds and support for purchasing conservation easements come from hunters who believe they will have automatic access to your property, but that isn't always required.

I've read the contract and understand it, so I should just sign.

THINK AGAIN. Words have certain meanings and sometimes, those meanings change. For example, some of the easements sold in ND today state that "the rights and interests granted to the United States, herein shall become part of the National Wildlife Refuge System and shall be administered by the US-FWS, pursuant to the National Wildlife Refuge System Administration Act, 16 USC 663dd." Have you read that piece of legislation? Do you understand it? Does it allow the agency flexibility with rules and definitions? Have you ever known an agency to change rules? THINK! Then consult an attorney and accountant experienced with easements.

5, 13 22 64

Missouri Avenue?

*A house-lined river, like a city street,
or a natural scenic wonder?*



The Threats



Your ownership interests and enjoyment of the Missouri River are threatened. This unique public resource is being ripped and tamed for private gain. The Garrison Reach is being rock rip rapped and tamed, not for navigation like the downstream barge channel, but for private riverfront development. Rip rapping enables construction of trophy homes on the river's immediate edge. Riverfront development is sprawling nine miles north of Bismarck.

Any semblance of a natural river is disappearing. Rock rip rapping prevents the river from meandering and forming new backwater areas, braided channels and islands. If the river is constricted by rock rip rapping, we will end up with an armor-plated canal, lined with houses like a city street. The natural scenic beauty of the river will be gone. At a cost of a million dollars per mile, rock rip rapping is not about protecting farmland. Public money should be used for public good.

The Solutions

Through wise land use planning, development can occur. Fish and wildlife values along with natural scenic qualities of the river can be preserved. Housing setbacks and a buffer zone will allow development in harmony with the river's natural scenic beauty, protect the interrelationship between the terrestrial and aquatic habitats needed by the river's wildlife, and prevent lawn chemicals from polluting the water.

Farmland and natural areas can be protected from development by purchasing easements from farmers who want to preserve their land. Otherwise, in the future, landowners may be forced to sell when their land is valued and taxed as developmental property. Funds should be obtained by North Dakota's congressional delegation from the Land and Water Conservation Fund. It was created to combat urban sprawl by using offshore oil revenues for natural resource protection and greenway creation.

*It's Everyone's River
For Our Families
For Our Future*

- North Dakota Wildlife Federation
- Lewis & Clark Wildlife Club
- North Dakota Chapter of the Wildlife Society
- Turkey Runners Group of the Sierra Club

Advocating:
Managed Development
Wise Land Use Planning
Protection of Public Ownership Values

Name _____
Address _____
City, State, Zip _____

20
cent
stamp
here

As a friend of the Missouri River,

- I am signing this card to support the following:
- 300 foot housing setbacks, including a 100 foot buffer of uncut natural vegetation.
 - A prohibition on the issuance of permits for additional rock rip-rapping, except to protect infrastructure and historical/cultural sites.
 - Implementation of a program and funding for the purchase of easements to protect farmland, historical sites, natural areas and the river's scenic beauty.

Sincerely, _____

Friends of the
Missouri
PO BOX 2411
Bismarck, ND 58502



1808 E. Capitol Avenue
Suite 181
Blairsville, MD 50801-2102

KEITH TREGO
Executive Director

Res: (701) 223-7290
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FAX: (701) 223-8837
ndw@keith@bellsouth.com

March 9, 2000

Mr. Barry O. Hasti
State Supervisor of Assessments
ND Tax Department
600 E. Boulevard
Bismarck, North Dakota 58505-0599

COPY

Dear Mr. Hasti:

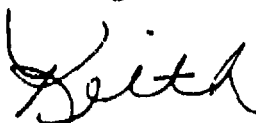
The North Dakota Wetlands Trust is implementing a pilot program of term easements (30 years) that will offer protection for wetlands, grasslands and agricultural values of land. Other current programs are also available that provide North Dakota landowners the opportunity to protect those same values through long-term conservation easements. As you know, property taxes have increased in recent years and have become an ever increasing proportion of the operating revenue of local political subdivisions. Thus, one of the obvious questions posed to me when I explain conservation easements is the potential impact of property taxes on agricultural land where conservation easements have been donated or sold.

Your answer to the following two questions would be helpful in explaining conservation easements to groups and individuals in North Dakota:

1. If a landowner sells or donates a conservation easement and surface use remains as agriculture, as would be the case under nearly all typical conservation easements, would a county lower the property taxes?
2. Is there any statute which provides an opportunity for a landowner to petition a county to lower property taxes as the result of the sale or donation of a subset of property rights through a conservation easement?

Your help in clarifying these very important facts is much appreciated.

Best regards,



Keith Trego
Executive Director

WETLANDS TRUST

Keith Trego
Executive Director
P.O. Box 3175
Bismarck, ND 58502-3175
(701) 223-8501
Fax: (701) 223-6937

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[HTTP://WWW.STATE.ND.US/TAXDPT](http://www.state.nd.us/taxdpt)

March 13, 2000

COPY

Keith Trego
Executive Director
North Dakota Wetlands Trust
P.O. Box 3175
Bismarck, ND 58502-3175

Dear Mr. Trego:

This is in response to your letter dated March 9, 2000 in which you describe a program of pilot program of term (30 years) easements that will protect wetlands, grasslands and agricultural values of land. Current programs offer the same protection through long-term conservation easements. You then ask the following questions about the property tax status of these conservation easements:

1. If a landowner sells or donates a conservation easement and surface use remains as agriculture, as would be the case under nearly all typical conservation easements, would a county lower the property taxes?

I do not believe the valuation of the agricultural land under a term easement would be reduced because of the easement. The reasoning for this belief follows:

The definition of agricultural land is found in North Dakota Century Code § 57-02-01(1) quoted, in relevant part:

57-02-01. Definitions. As used in this title, unless the context or subject matter otherwise requires:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals ...

The valuation of agricultural land is set out in N.D.C.C. § 57-02-27.2, which states, in relevant part:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for inundated agricultural land. ...

Keith Trego
March 13, 2000
Page 2

The statute prescribes a formula based upon agricultural production of the land as the basis for valuation of agricultural property for property tax purposes. Qualifying inundated land is valued at ten percent of the formula derived noncropland value. There are no provisions for reflecting the existence of easements or other property rights that might be severed from the surface ability to produce crops or graze livestock.

A plain reading of the statutes leads to the conclusion that the method provided by N.D.C.C. § 57-02-27.2 is the only method for valuation and assessment of agricultural land.

Your second question asks:

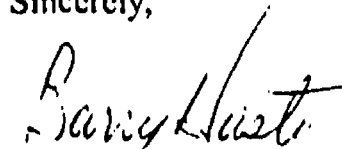
2. Is there any statute which provides an opportunity for a landowner to petition a county to lower property taxes as the result of the sale or donation of a subset of property rights through a conservation easement?

A landowner may have land removed from the tax rolls if it meets the criteria of N.D.C.C. § 57-02-10, quoted as follows:

57-02-10. Inundated and highway easement lands exempt from taxation. The board of county commissioners is authorized and directed to remove from the tax rolls and to declare as exempt from taxation all inundated lands upon which the owner thereof has granted or hereafter shall grant a permanent easement to the United States of America, its instrumentalities, or agencies, for the purpose of constructing, maintaining, and operating water or wildlife conservation projects, and all lands upon which the owner thereof has granted or hereafter shall grant an easement for a highway or road right of way to the United States, its instrumentalities or agencies, or to the state or its political subdivisions, and such lands so removed from the tax rolls shall remain exempt until such time as such water or wildlife conservation projects or highway shall have been abandoned. Such lands shall not be removed from the tax rolls and declared exempt from taxation until such time as the construction of such water or wildlife conservation projects or highway thereon shall have been completed. (Underlining added for emphasis.)

I trust that this information is helpful to you. If you have any questions or want additional information, please contact me at (701) 328-3128, or toll-free in North Dakota 1-800-638-2901, option 5.

Sincerely,



Barry Hasti
State Supervisor of Assessments